IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 544 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HANSABEN DHANJIBHAI SORATHIYA

Versus

POPATLAL HIRABHAI SORATHIYA

Appearance:

1. Civil Revision Application No. 544 of 2001

MR YATIN SONI for Petitioner No. 1-4

RULE SERVED for Respondent No. 1,2/1-2/7,6

..... for Respondent No. 2

M/S THAKKAR ASSOC. for Respondent No. 3-5

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 11/07/2001

ORAL JUDGEMENT

Heard learned Advocate Mr. Y.S. Soni for the petitioner and learned Advocate Mr. Pahwa for the

respondents nos.3 to 5. The respondents nos.1, 2, 2/1 to 2/7 and 6 absent though served.

1. The petitioners have challenged the order dated 12-4-2001 passed by the learned Civil Judge (S.D.), Rajkot, below Exh.27 in the proceedings of Regular Civil Suit no.1016/1997.

That vide impugned order the trial Court has granted application of the third party and has ordered that third party be impleaded as plaintiff no.5 in the proceedings of Regular Civil Suit no.1016/1997. It is submitted at the Bar on behalf of the petitioners that Civil Suit no.1016/1997 is filed for a declaration claiming share in the ancesstral propery and perpetual injunction restraining the defendant from interfering with the possession of the plaintiffs. That the third party M/s. Shital Premises Pvt. Ltd, Rajkot, has no interest whatsoever in the subject matter of the proceedings of Civil Suit no.1016/1997, and thereby, the third party could not have been impleaded as a party to the proceedings, much less, as plaintiff no.5 , and hence, the petition.

2. It is pertinent to note that though the respondent no.6 is duly served, no one has appeared in response to notice of rule. That application Exh.27 discloses the fact that third party is a Company registered under the provisions of the Indian Companies Act, 1956 and one of the Directors Shri Shasheenbhai had an agreement of development in respect to suit land with one Rajendra K. Patel, the power of attorney holder of deceased Patel Hirabhai Dharamsibhai who is the ancesstor of the plaintiffs. That the said agreement dated 12-11-1991 was entered into by the third party Company to develop the suit land and for the said purpose, the third party had complied with the procedure to obtain N.O.C. under the U.L.C. Act for residential houses and had obtained the permission. That the plaintiffs despite knowing such fact have filed the suit to destroy the rights of the third party, and as such, third party has come to know about the proceedings by reading newspaper, and thereby, application was made.

It is pertinent to note that even before the trial Court no documentary evidence is produced to establish so called interest of the third party into the suit property and even if it is assumed that the power of attorney of one of the deceased ancesstor of the plaintiffs had entered into agreement of development that would confer a right on a third party which could be

enforced by separate suit, but the presence of a third party is not necessary in the proceedings of Civil Suit no.1016/1997 for a complete and effective decision of the dispute between the parties which is for a declaration of share in ancesstral property, partition and injunction only.

3. On the basis of the foregoing discussion, the impugned order passed by the trial Court being in illegal exercise of jurisdiction, the petition deserves to be allowed, and hence, the impugned order is hereby quashed and set aside. Rule to that extent is made absolute. No order as to costs.

(A.K.Trivedi,J.)

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